

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.6272 OF 2006

Shri Laxman Keshavrao
Vichare ..Petitioner.

Vs.

Mrs.Kamal Laxman Vichare
& Ors. ..Respondents.

Mr.S.P.Kadam for the Petitioner.
Mr.J.M.Puranik for Respondent No.1.

CORAM : S.J. VAZIFDAR, J.
DATED : 8TH JANUARY, 2007

P.C. :

This is an Appeal against the order dated 21.7.2006 by which the Petitioner has been ordered to pay the arrears of the interim maintenance fixed by the order dated 26.12.2001 by the Family Court.

2. The order dated 26.12.2001 directed the Petitioner to pay a sum of Rs.5000/- by way of interim maintenance to the Respondents. That order was challenged by the Petitioner in Writ Petition No.2395 of 2002. The order dated 26.12.2001 was stayed by this Court. In the meantime, the main petition for restitution of conjugal rights was itself finally disposed of. The Respondent

succeeded in obtaining the order for restitution of conjugal rights. The Respondent's prayer for maintenance was however rejected.

3. The Appeal against the order, disposing of the Respondent's Petition is dated 28.10.2005.

4. That order has been challenged by the Petitioner in Family Court Appeal No.23 of 2006. In that Appeal, the Respondent took out a Civil Application No.56 of 2006 for interim maintenance pending the hearing and final disposal of the Appeal. By an order dated 30.6.2006, interim maintenance at the rate of Rs.3500/- per month from 9.3.2006 has been granted. The main Appeal is pending.

5. In the meantime, in view of the proceedings before the Family Court having been finally disposed of by an order dated 4.4.2006, Writ Petition No.2395 of 2002 was disposed of as infructuous.

6. It is pertinent to note that the learned Judge has observed that the said Writ Petition had become infructuous. The representation therefore clearly was that the order dated 26.12.2001 would not operate. Even assuming that the order dated

26.12.2001 does operate, in view of the representation of all the counsel, it would be unfair now to permit the Respondents to execute the order dated 26.12.2001. It is also pertinent to note that no Appeal has been filed against the order of the Family Court rejecting the Respondent's application for maintenance.

7. In the circumstances, the rule is made absolute in terms of prayer (a).